APPENDIX A

Findings Of Fact And Conclusions of Law of the District Court

1. The Statement of Policy was issued by the President of the General Electric Company on December 9, 1953 after thorough consideration by him and consultation with appropriate officials of the Company. Both the decision to issue such a policy and the decision as to its substance were made solely as a Company matter without any consultation or communication with any Government representatives or other persons outside the Company. The Statement of Policy was not requested, ordered or required by any Government agencies or any Government authority as a condition for the granting or maintaining of any Government contracts. The Company recommended to Government agencies that such agencies should determine and direct when an employee should be excluded from civilian as well as classified military work, and such recommendations were rejected by the Government agencies.

2. The Statement of Policy was issued by reason of the conduct of certain Company employees in appearing before duly authorized Congressional committees and asserting their privilege against self-incrimination in refusing to respond to questions pertaining to Communist affiliations, espionage or sabotage. By such acts these employees, both in the opinion of the management and in fact, subjected General Electric to widespread adverse publicity and adverse criticism from stockholders and customers, injured the Company's good name, threatened the Company with the loss of good will, created unrest among Company employees, disrupted plant morale and raised grave doubts as to the security of the Company's plants which

were shown to be important to the national defense. At the time the policy was promulgated, General Electric also recognized that it was confronted with the prospect that Congressional committees would hold further hearings involving its employees on the subject of Communism, espionage and sabotage. Several such further hearings in fact subsequently took place.

3. The Statement of Policy was applied by General Electric in accordance with its terms to all employees of the Company whether or not members of plaintiff Union or any Union. The Policy was not designed nor carried out for the purpose of or with the effect of discriminating against any particular union or the members of any particular union or any particular employee, including plaintiff Nelson, by reason of union affiliation or activity. Plaintiff Nelson, at the time of his suspension and discharge, and for a considerable period prior to that time was president of the Local at General Electric's Erie plant. He continued to be president of that Local following his suspension and discharge and there was no change in his Union activities.

4. The Company promulgated, issued and put into operation the Statement of Policy without prior consultation or bargaining with the plaintiff Union or any of its representatives, or any of the many other unions with which the Company had contracts. There was no provision of the National Agreement between the Company and the Union which required such advance consultation. Article I of the National Agreement which has appeared in various forms in different prior National Agreements between the Company and the Union obligates the Company to recognize the Union as the sole and exclusive bargaining agent of the employees covered by the Agreement, for the pur-

poses of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment. This Article was never intended by the parties to require General Electric to give the Union advance notice of rules relating to discharge. It has been the practice of the Company under the present and prior National Agreements to issue rules stating grounds for immediate discharge without prior consultation with the Union. It was stipulated by the parties that the Company had not, prior to the issuance of the Statement of Policy, ever issued instructions nationally with respect to causes for discharge.

5. The National Agreement does not specify types of conduct which the Company may make the basis for immediate discharge and there never has been any agreement or understanding between the Company and the Union limiting the Company's right to determine what types of conduct should result in immediate discharge. Proposals by the Union to include such limitations in prior National Agreements were rejected by the Company. It has been the intention of the parties, and the National Agreement contemplates, that the Company will take such disciplinary action as it deems appropriate and that the Union or individual employees may then challenge the Company's action through the grievance machinery provided in Article XV of the National Agreement. The National Agreement provides that an employee is entitled to a warning notice and then to a notification one week in advance of any penalty discharge, "except for discharges for obvious cause."

6. When the Union protested the issuance of the Statement of Policy shortly following its promulgation, General Electric recognized the Union as the exclusive bargaining agent for the employees covered by the contract and, in

accordance with the Union's request, immediately scheduled conferences with officials of the Union to discuss the matter. Officials of General Electric met with representatives of the Union, heard their grievances fully and bargained in good faith concerning the Policy. The only proposal made by the Union was that the Policy be dropped and discussions then be instituted. This proposal was rejected by the Company after conferences between the Company and the Union. General Electric was, at all times requested, ready and willing to negotiate and did, in fact, negotiate concerning the Policy, the need for it and its terms and operation with Union representatives both through the grievance machinery established by Article XV of the National Agreement and otherwise.

7. Warning Notices were not given employees discharged pursuant to the Policy. The reference to the Warning Notice procedure was incorporated in and was continued in the National Agreement at the instance of the Company, and Warning Notices were intended by the parties under the National Agreement to be used, and have been used, in those situations where an employee's conduct on the job could perhaps be improved if he was given a notice of deficiency and an opportunity to correct it. The record discloses that the parties intended and recognized that General Electric did not by the National Agreement bargain away its right to discharge immediately without any Warning Notice employees the Company considered so undesirable that they should be immediately removed from the plant.

8. There is no provision in the National Agreement which makes discharges subject to arbitration except as to issues arising under Article IV relating to discrimination for union activities. The question whether discharges gen-

erally should be subject to arbitration was frequently discussed between the parties in the negotiation of the present and prior National Agreements and the parties disagreed on this point. The Company rejected proposals of the Union designed to make discharges generally subject to arbitration. The National Agreement contemplates that in the event the Company and the Union cannot settle a question as to discharge through the grievance machinery provided in Article XV, the Company's decision as to the penalty will stand and the Union has the right to strike under Articles XVI(2) and XVII(1).

9. The parties have not agreed to submit to third party review, either by a court or arbitrator, the propriety of discharges generally or other penalties imposed by the Company in disciplinary cases.

10. In the light of the entire record the assertion by Company employees of the privilege against self-incrimination under circumstances which brought the Statement of Policy into play justified the Company in immediately applying the Statement of Policy to such employees. Their discharges were discharges for "obvious cause". Under the National Agreement no week's notice was required.

11. Plaintiffs failed to prove any concerted action, conspiracy, plan or program between the Company and members of the staff of the Permanent Sub-Committee on Investigations of the Senate Committee on Government Operations to deprive plaintiff Nelson or any other employee of General Electric of his civil rights or any understanding or agreement between the Company and such staff members in any way relating to, affecting or bearing on employment or discharge by General Electric. Officers of General Electric named in the complaint as having par-

ticipated in the alleged conspiracy gave evidence negating the existence of the conspiracy and were not cross-examined by plaintiffs on this issue. Other witnesses available in court to plaintiffs on this issue were not called or examined by them.

12. Insofar as the claim of conspiracy is concerned, plaintiff Nelson is not a member of the class for which he purported to sue. He is not shown to have appeared before the Permanent Sub-Committee on Investigations of the Senate Committee on Government Operations and no claim is made of any conspiracy involving the staff or members of the different Committee before which he did appear. Neither plaintiff Nelson nor any member of the alleged class testified at the trial. No evidence was offered to show that plaintiff Nelson in fact represented anyone but himself.

Conclusions of Law

1. General Electric Company did not violate Articles I, IV or XV or any other provision of the National Agreement between the Company and the United Electrical, Radio and Machine Workers of America (Exhibit A to the Complaint) in promulgating the Statement of Policy (Exhibit B to the Complaint) and discharging employees, including plaintiff Nelson, pursuant to it.

2. Neither the Statement of Policy nor the discharge of employees, including plaintiff Nelson, pursuant to it violates the Fifth Amendment or any other provision of the Constitution of the United States.

3. General Electric did not engage in a plan or conspiracy with anyone to deprive plaintiffs, or any employees of General Electric, of rights, privileges or immunities guar

anteed or secured by the Constitution of the United States. Neither plaintiff Nelson nor any individual for whom he claimed to sue was in fact deprived of having or exercising any right or privilege of a citizen of the United States. No violation of U. S. C. A. Title 42, §§ 1983, 1985(3) or U. S. C. A. Title 18, § 241 was established.

4. In view of the facts contained in Finding 12, plaintiff Nelson failed to satisfy the requirements of Rule 23(a) insofar as he purported to sue on behalf of other employees for damages from alleged violations of U. S. C. A. Title 42, §§ 1983, 1985(3) or U. S. C. A. Title 18, § 241 arising from the alleged conspiracy between the Company and members of the staff of the Permanent Sub-Committee on Investigations of the Senate Committee on Government Operations.

CHARLES F. MCLAUGHLIN,
U. S. D. J.

Dated: February 15th, 1955

Seen: JOSEPH FORER
Attorney for Plaintiffs

APPENDIX B

Additional Statutes and Rule Involved

Labor-Management Relations Act, Sec. 301(a), 29 U.S.C.A. § 185(a):

(a) Suits for violation of contracts between an employer and a labor organization representing emoplyees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title III, § 301, 61 Stat. 156.

District of Columbia Code, Title 11, Sec. 755(a):

(a) The Municipal Court for the District of Columbia, as established by this subchapter shall consist of a criminal and a civil branch. The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia or the judges thereof on the effective date of this subchapter and in addition the said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000 and, in addition, shall also have exclusive jurisdiction of such actions against executors, administrators and other fiduciaries: *Provided, however,*

That the District Court of the United States for the District of Columbia shall have jurisdiction of counterclaims and crossclaims interposed in actions over which it has jurisdiction. The court shall also have jurisdiction over all cases properly pending in the Municipal Court of the District of Columbia or the Police Court of the District of Columbia on the effective date of this subchapter.

Federal Rules of Civil Procedure, Rule 23(a):

(a) *Representation.* If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.